

THE STATE BAR OF CALIFORNIA AGRIBUSINESS COMMITTEE MEETING

April 21, 2006

MINUTES

A regular meeting of the Agribusiness Committee of the Business Law Section of The State Bar of California ("Committee") was duly held at 10:00 a.m. on Friday, April 21, 2006 at the offices of Western Growers, 17620 Fitch Street, Irvine, California 92614 (the meeting originally was to be held at the offices of Rynn & Janowsky, LLP, 4100 Newport Place Drive, Suite 700, Newport Beach, California, but since Rynn & Janowsky's conference room can seat only 12 people comfortably, and since a total of 15 people (including speakers) had indicated they planned on attending, the meeting was relocated to the main board room of Western Growers in Irvine).

The meeting was called to order at 10:00 a.m. by Joe Martinez, Committee Co-Chair. The following Members of the Committee were present at the meeting ("Members"): Joe Martinez, Steve Tripp, Bart Botta, Nina Ortega, Renee Robin, April Pearson, and Joe Marchini. Past members and Chairs, Clare Einsmann and Patricia Rynn attended, as well as past member Effie Anastassiou, and the following guests of the Members of the Committee, both of whom have indicated an interest in joining the Committee, Jason Resnick and Bradley Cornell. Finally, Jason Read and Thomas Oliveri also attended as guests of the Members of the Committee, and also as two of the three speakers (Patricia Rynn was the third speaker).

The first matter of business was the approval of a Motion accepting the Minutes from the previous meeting of the Committee held on March 24, 2006. Copies of the Minutes of the March 24, 2006 meeting of the Committee were circulated to everyone and read, and upon motion duly made and seconded, were unanimously approved. It was noted that the approved Minutes of all past meetings of the Committee held this year were posted on the Agribusiness Committee page of the Business Law Section Website.

The second matter of business was the on-going general discussion regarding the goal of increased active membership for the Committee. Bart Botta briefly discussed that the ability to obtain MCLE credit for activities through provider, Baker, Manock & Jensen, should continue to be utilized as this is a great benefit, and there was consensus among the members of the Committee on this point (three (3) MCLE credit hours were obtained by attorneys who attended all parts of this meeting). The goal of increased active membership for the Committee from attorneys specifically from Southern California was also discussed, and was appropriate in light of the attendance at this meeting of guests, Jason Resnick (Irvine) and Bradley Cornell (Los Angeles). Past Chair Clare Einsmann commented on some steps that were successful in past years to increase membership.

The third matter of business, an on-going discussion regarding the Business Law Section's Website and E-mail capabilities, was briefly discussed, and Steve Tripp commented on the efforts and strides made so far this year in taking full advantage of the Business Law Section Website's tools, such as the use of a global e-mail notification to distribute information from any

committee to all of the members of the Business Law Section , the need for everyone to update their on-line profile information, and the “AgriBusiness Committee E-Bulletin” template.

The fourth matter of business was a discussion regarding the status of the Committee’s proposed legislation for certain amendments to California Food and Agricultural Code Sections 55407 *et seq.* (governing producer’s liens). The recent initial draft prepared by Tom Mouzes of actual proposed text for the statute sections on the definition of “processing” (proposed Food and Agricultural Code Section 55408) and the section on liability of officers, directors and members (proposed Food and Agricultural Code Section 55923) was distributed and discussed. There was agreement that the proposed definition of “proceession” was a good first draft, and that all Committee members would review the language in greater detail and raise any suggested revisions as soon as possible. As to proposed Section 55923 on the liability of officers, directors and members, several Committee members commented that they thought the proposed language of this Section was too broad and would potentially lead to the possibility of “strict liability” in all circumstances for officers and directors. The personal liability that exists under case law interpreting the federal Perishable Agricultural Commodities Act (“PACA”) was discussed, and all Committee members agreed that this was a good starting point, but that further revision to proposed Section 55923 was needed in order to correct the overbroad reading of the Section. The Chair and Co-Vice Chairs noted the need to meet the State Bar of California Business Law Section’s June 30, 2006 deadline for submission of final proposed legislation text, and that continued work was necessary. In response to questions on the procedure involved in the process, Co-Chair Joe Martinez explained and discussed the steps involved in submitting proposed legislation, finding a sponsor, etc.

The fifth matter of business was a Power Point presentation to the Committee entitled “Produce Sales Basics” given by Thomas R. Oliveri, the Director of Trade Practices & Commodity Services at Western Growers. In connection with his presentation, a handout was given to all attendees that included information on both Thomas Oliveri’s presentation and the next presentations to be given by Patricia Rynn and R. Jason Read. The Committee was then given an account of the various issues and problems that arise in the sale of produce, from the point of harvest to the point it reaches the consumer, including discussion of sales terms, marketing terms, shipping terms, problems on arrival, inspection issues, and EDI (electronic data interchange) issues. An enlightening question and answer period followed the conclusion of Mr. Oliveri’s presentation.

The meeting was then temporarily adjourned so that the members of the Committee and all guests could have lunch, which was generously provided by Western Growers Association.

The meeting was reconvened for the purpose of completing the remaining presentation scheduled for the day, the sixth matter of business, a presentation by attorneys Patricia Rynn and R. Jason Read on “PACA Discussion and Developments” and “Credit Issues in Produce Transactions.” A Power Point presentation was given, and Ms. Rynn and Mr. Read gave a detailed presentation on the PACA, from its enactment in 1930 through several amendments to present day. The Committee was also given an account of the various issues that arise in PACA cases, including issues involving extension of payment terms beyond 30 days, PACA trust enforcement in federal court, personal liability under the PACA, marketing agreement issues, and EDI issues as they

involve preservation of PACA trust rights. An enlightening question and answer period followed the conclusion of Ms. Rynn and Mr. Read's presentation.

A seventh matter of business was a discussion of a current case being handled by Committee member Effie Anastassiou. The case is on appeal to the California Supreme Court and it involves the issue of what constitutes a "joint employer." As this is an important case that could have far reaching implications, all Committee members and guests engaged in a detailed discussion of the case and the issues.

The final matter of business was an update on immigration reform provided by general counsel for Western Growers, Jason Resnick. Mr. Resnick provided a detailed update on S. 2611 and S. 2612, the Hagel-Martinez compromise modifying the Senate Judiciary Committee's immigration reform bill. Discussion occurred on the bill with Hagel and Martinez as lead sponsors, as well as other current immigration issues, all of which could and will have a big impact on agriculture.

There being no further business, the meeting was adjourned at 2:30 p.m.

Respectfully submitted,

Bart M. Botta
Co-Vice Chair and Meeting Recording Secretary